

REMARKS

Claims 1-63 are pending in the application.

Claims 1-10, 13-41 and 44-63 have been rejected.

Claims 11, 12, 42 and 43 have been objected to.

Claims 13 and 44 have been canceled, without prejudice.

Claims 1, 3, 4, 31, 32, 60 and 61-63 have been amended, as set forth herein.

I. **OATH/DECLARATION**

The Office Action objects to the oath or declaration as lacking the residence information of inventor Moses Sun. Applicant is submitting the residence information for this inventor on an application data sheet. The residence information is the residence information known to the assignee at the time of filing of the application, as the inventor Moses Sun is no longer employed by the assignee.

II. **CLAIM OBJECTION**

The Office Action objects to Claims 1, 3, 4 and 62 because of informalities in the claims. The Applicant has amended Claims 1, 3, 4 and 62 to correct those informalities. The Applicant respectfully requests withdrawal of the objections.

III. ALLOWABLE SUBJECT MATTER

The Applicants thank the Examiner for the indication that Claims 11-12 and 42-43 would be allowable if rewritten in independent form. Because the Applicant believes that Claims 11-12 and 42-43 depend from allowable base claims, the Applicant is not rewriting Claims 11-12 and 42-43 in independent form, at this time.

IV. REJECTION UNDER 35 U.S.C. § 102

Claims 1-6, 11-17, 19-37, 42-46 and 48-63 were rejected under 35 U.S.C. § 102(e) as being anticipated by Cheung et al (U.S. Patent No. 6,515,964).¹ The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

¹Applicant notes that Claims 11, 12, 42 and 43 are objected to in the Office Action Summary and section 7 of the Office Action as being dependent upon a rejected base claim, therefore Applicant assumes that Claims 11, 12, 42 and 43 were inadvertently included in this list of rejected claims.

Independent Claims 1, 32, 61 and 63 (as amended) recite method, apparatus and article in which a throughput measurement request causes a trace packet to propagate between an origination terminal and a destination terminal. Independent Claim 62 (as amended) recites a method that includes receiving a throughput measurement response, propagating a trace packet to the destination terminal in response to receiving the throughput measurement request, and transmitting a throughput measurement response after communicating with the destination terminal. Cheung fails to disclose these elements/features of Applicant's independent claims.

Cheung discloses that network performance parameter data is accumulated at each gateway or accessed via a quality of service computer. See Cheung, Col. 7, lines 36-39, as cited by the Office Action. Cheung does not disclose transmitting a throughput measurement request wherein the throughput measurement request causes a trace packet to propagate between the origination terminal and the destination terminal (which then results in a throughput measurement response). See, Claims 1, 32, 61, 64. Moreover, Cheung fails to disclose propagating a trace packet to the destination terminal in response to receiving the throughput measurement request, and transmitting a throughput measurement response after propagating the trace packet to the destination terminal. See, Claim 62. As such, Cheung fails to disclose every element/feature of Applicant's invention arranged as they are in amended independent Claims 1, 32 and 61-63 (and Claims 2-6, 11-12, 14-17, 19-31, 33-37, 42-43, 45-46 and 48-60 depending therefrom).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-6, 11-17, 19-37, 42-46 and 48-63.

V. REJECTION UNDER 35 U.S.C. § 103

Claims 7-10 and 38-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheung et al (U.S. Patent No. 6,515,964). Claims 14-17, 45 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheung in view of Chen et al (U.S. Patent No. 5,793,976). Claims 18 and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheung in view of Vargo et al (U.S. Patent No. 6,356,545). These rejections are respectfully traversed.

Claims 7-10, 14-18, 38-41 and 45-47 depend from amended independent Claims 1 and 32 and incorporate the features/elements therein recited. Thus, for the same reasons given above with respect to the §102 rejection of independent Claims 1 and 32, none of the references either alone, or in combination, disclose, teach or suggest all the features/elements of dependent Claims 7-10, 14-18, 38-41 and 45-47 and, therefore, a prima facie case of obviousness has not been established.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 7-10, 14-18, 38-41 and 45-47.

VI. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

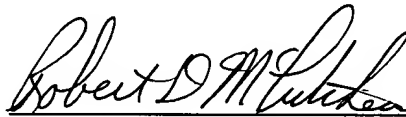
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 10/27/2003



Robert D. McCutcheon
Registration No. 38,717

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3632 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *rmccutcheon@davismunck.com*